IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Criminal Appeal No.100-DBA of 1997

Date of decision: 31.01. 2007

The State of Haryana.

-----Appellant..

Vs.

Gobind Ram and others.

-----Respondents..

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE H.S. BHALLA

Present: Mr. P.S. Sullar,D.A.G., Haryana
for the appellant.

Adarsh Kumar Goel, J.

The State has filed this appeal against acquittal of the respondents of the charges under Sections 302, 304-B, 498-A/34 of the Indian Penal Code.

Case of the prosecution is that the deceased Kamla was married to Pappu son of Gobind Ram and Champo Devi alias Gulabo about three years prior to the occurrence, which took place on 15.11.1993. She was harassed for dowry. On 15.11.1993, when she was preparing meal, respondent No.1 sprinkled kerosene on her with an intention to kill her and respondent No.2 put her ablaze. She ran outside, which aggravated the fire. She was taken to Civil Hospital, Bhiwani. The doctor sent a message to the police. S.I. Amrik Singh reached the hospital and recorded the statement of the deceased, after taking the opinion of the doctor and registered FIR on that basis, which is as under:-

> "Stated that I am resident of village Sujan Kotli. I was married with Bappu s/o Gobind Odd Rajput by caste r/o Kirwar about 3 years back, my father had given a lot of dowry at the time of marriage which includes TV also but my mother in law Champo Devi and father in law often harassed me for more dowry, my mother in law had also beaten me twice due to which, I had gone to my parental home where after residing u/s month my husband Pappu took me to

my material home, my mother in law and father in law had also beaten my husband that why he took Kamla there. Today when I was cooking food for my husband then my father in law with an intention to kill me poured kerosene oil on me then my mother in law put fire on me, upon this, I ran out side due to which, fire in my clothes extended, there after, I do not know what happened, now you came here, you had got recorded statement, heard, it is correct."

On the same day, Shri Balbir Singh, Additional CJM, Bhiwani also recorded the statement of the deceased, wherein she stated that at 7/8 A.M., her mother-in-law sprinkled kerosene from the bottle on her body and set her on fire. Her sister-in-law, aged 20 years, was present and some children were also present. Her husband and her sister-in-law were not at fault. Thereafter, she became unconscious. Her mother-in-law used to demand more dowry, which was the reason for her having been set on fire. Text of the statement is reproduced below:-

"Today about 7.00 or 8.00 in the morning, my husband went to the fields to work. My mother in law Gulabo who is also known by the name of Champo Devi sprinkled the kerosene from the bottle on my body and then with the help of a match box she set my clothes on fire and she herself started crying that her daughter in law had set herself ablaze. At that time, besides we two, my Nand Bimla, aged about 20 years, was also present and some small kids were also in the nearby place. My husband and my Nand are not at fault. They did not do anything. Afterwards, many persons collected there. I do not know what happened thereafter. I become unconscious, my mother in law used to demand more dowry from me and my father. My mother is dead. For not bringing more dowry, my body has been set ablaze by my mother-in-law."

The deceased died on 16.11.1993 and receiving this information, Amrik Singh, S.I, prepared inquest report and got post-mortem conducted. After completing the investigation, the accused were challaned. Charge was framed under Section 304-B IPC and in the alternative under Section 302/34 IPC.

Gist of prosecution witnesses and their evidences is as under:-

PW-1	Dr. Suman Madan	She conducted the post mortem on the deadbody of Kamla along with Dr. K.K. Basotia.
PW-2	Dr. Ved Parkash	He had prepared the medico legal report of Kamla on 15.11.93 at the time of her admission to the hospital.
PW-3	Madan Lal	He is brother of the deceased but has not supported the case of the prosecution.
PW-4	Balbir Singhh, ACJM, Bhiwani	He recorded the statement of the injured Smt. Kamla which is the first version of the injured.
PW-5	Mange Ram, Patwari	He prepared the scaled site plan of the place of occurrence.
PW-6	Hari Chand son of Lal Chand	He is father of the deceased.
PW-7	HC Ram Singh	He had received the ruqa regarding the admission of Kamla in the hospital in injured condition.
PW-8	Dr.D. S. Chaudhary.	He sent information about the death of Kamla on 16.11.93.
PW-9	HC Dev Vert	He recorded formal Fir on 15.11.93.
PW-10	SI Amrik Singh	He is the investigating officer of the case.

The accused Gobind Ram took the plea that at the time of the incident, the deceased was alone in the house and she set herself on fire. She and her husband were living separately. Somebody met the accused at the Bus Stand and told him about the incident. The accused with his son returned home and took the deceased to the hospital. Accused Champo pleaded that she was falsely implicated. The accused examined Pradeep Singh, DW-1, Suraj Bhan, DW-2, Lekh Raj, DW-3 and Parbhu Ram, DW-4 to prove that the accused persons were not at home at the time of occurrence.

After considering the evidence on record, the trial Court held that the case of the prosecution was not proved and acquitted the accused, inter-alia, for the following reasons:-

(i) PW-3 Madan Lal, brother of the deceased did not support the prosecution version and stated that no dowry was ever demanded from his sister, nor was she ever harassed by the accused. He further stated that he advised his sister to make a statement before the Magistrate implicating the accused persons.

(ii) PW-6 Hari Chand deposed that the accused were demanding gold or cash amount of Rs. 30,000/- from the deceased, which she conveyed to the witness, but, this part of evidence could not be accepted, being an improvement over the previous statement made to the police. His version was also inconsistent with the dying declaration, wherein the demand of dowry was alleged to be to the extent of Rs.3,000/- and was also inconsistent with the stand of Madan Lal that no demand for dowry has been made.

(iii) Dying declaration was not truthful as there were contradictions in the two dying declarations about the involvement of the accused as also about the nature of dowry demanded.

(iv) Though in the circumstances, cruelty could be inferred, but there is no evidence that the same was on account of demand of dowry.

(v) The incident appeared to be suicidal instead of homicidal since there was no struggle.

We have heard learned counsel for the State and perused the findings recorded.

Only contention put forward by learned counsel for the State was that the dying declaration should have been accepted and substantially, the same indicated demand of dowry before the death. Marriage was admittedly within seven years of the incident and the death was unnatural, homicidal or suicidal.

Undoubtedly, the occurrence is an unfortunate one, resulting in loss of life of a young woman, but unless demand of dowry is proved, the offence under Section 304-B could not be held to have been proved. Even if two views are possible, view taken by the trial Court cannot be held to be perverse or unreasonable. There are contradictions about items demanded in dowry in the statement of brother of the deceased, father of deceased and deceased herself, which create a doubt about genuineness of the version of demand of dowry. In appeal against acquittal, reappreciation of evidence is not permissible unless the reasons for acquittal can be held to be arbitrary or perverse.

Scope of appeal against acquittal has been gone into by the Hon'ble Supreme Court, inter-alia, in ***Jaswant Singh v. State of Haryana,*** AIR 2000 SC 1833, wherein it was observed:-

> "21. The principle to be followed by appellate courts considering an appeal against an order of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the order is clearly unreasonable it is a compelling reason for interference (see *Shivaji Sahabrao Bobade* v. *State of Maharashtra,* (1973 2 SCC 793: AIR 1973 SC 2622: (1973 Cri LJ 1783)). The principle was elucidated in *Ramesh Babulal Doshi* v. *State of Gujarat,* (1996) 9 SCC 225: 1996 AIR SCW 2438: AIR 1996 SC 2035 (1996 Cri LJ 2867):
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> > "While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then and then only reappraise the evidence to arrive at its own conclusions."

We, therefore, do not find any ground to interfere with the order of acquittal of the respondents.

The appeal is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

January 31, 2007 **(H.S. BHALLA)**
ashwani **JUDGE**